

Attention!

This is a representative syllabus.

The syllabus for the course you are enrolled in will likely be different.

Please refer to your instructor's syllabus for more information on specific requirements for a given semester.

Linguistics 4597.02: Language and the Law
Syllabus

Meetings: Tuesdays and Thursdays, 2:20-3:40, 006 Hayes Hall
Instructor: [XXX](#)
1961 Tuttle Park Place, Ohio Stadium East¹

Office Hours: XXX

Course Description:

Prerequisite: Junior or Senior standing.

Issues of interpretation are constantly before the courts, even in relatively homogeneous, monolingual cultures. Constitutions, statutes, contracts and other legal documents often contain language which is vague or ambiguous. It then falls to the courts to determine the interpretations that will prevail in application. But there are difficult questions about the extent to which the law, or expert opinion more generally, can determine the meaning of a word or expression. Equally difficult, and very controversial in the U.S. today, is the question of whether a law should be understood in terms of the intent of its framers, or only in terms of the “plain meaning” of the text itself. These issues have far-reaching consequences for how our legal system works. bearing on everything from contract law through interpretation of the U.S. constitution by the Supreme Court.

Besides the interpretation of legal documents, there are other vital questions about linguistic interpretation in the rule of law, including what constitutes a clear set of instructions to a jury, what it means that someone has the right to remain silent, what it means to give consent (for example, for sexual activity), what it means for an utterance to be a threat or a slur, and the interpretation of trademark and copyright law.

As background for these discussions, we’ll spend several sessions discussing basic semantic phenomena and theories of linguistic semantics, which we’ll subsequently apply to the legal issues. Then, through the relevant literature on the law, we will focus on real court cases, mostly in the U.S. legal system, which illustrate the challenges and pitfalls that interpretation presents to the courts.

Course Requirements:

This course fulfills the GE requirement for a cross-disciplinary seminar course.

¹ Enter between gates 22 and 24 on the east side of the horseshoe. Come to the first floor, then wind your way through indirect corridors to the northernmost office along the outer wall.

The GE Goals: Students demonstrate an understanding of a topic of interest through scholarly activities that draw upon multiple disciplines and through their interactions with students from different majors.

GE Expected Learning Outcomes:

1. Students understand the benefits and limitations of different disciplinary perspectives.
2. Students understand the benefits of synthesizing multiple disciplinary perspectives.
3. Students synthesize and apply knowledge from diverse disciplines to a topic of interest.

We will satisfy these requirements in this course by considering literature, theory and issues both from linguistics and the law. To develop a critical appreciation of each approach, the course will be run as a proseminar. Our central focus will be learning to read complex papers critically, to compare different points of view on the relevant issues, and to formulate consistent arguments in writing. But I will offer you more guidance about how to do this than one would typically get in a real graduate seminar, where these skills are presupposed.

For example, participants in a seminar are supposed to prepare themselves for each meeting by reading in advance the work to be discussed that day, and engaging with the work critically. That means that one has to grasp the logical structure of any arguments in the work, critically assess those arguments both in themselves and in comparison with other work under consideration, and prepare questions for discussion with the other participants. Hence, one of the central requirements for the present course is that you read each assigned paper or chapter *in advance of the class on which it is to be discussed* and post a critical question or comment about that reading on the class website by 10am of the day of class. As listed on the class schedule under “Other Work Due”, you’ll find that on 15 different days you’ll be required to post such questions. I will collect them and select the best to help guide our group discussion for that class. You’ll receive 3 points per set if they show evidence that you’ve completed and understood the reading, up to 5 points according to quality. One good critical question or puzzle is better than several lame ones.

A second kind of skill that helps both to develop the ability to read critically and, ultimately, better writing skills is being able to prepare a précis of what you have read. You’ll be required to prepare a 1-2 page précis for three different papers, one in week 5, one in week 9, and one in week 10. I’ll mount materials on the Carmen site to guide you in preparing a précis.

The third skill to be burnished here is critical writing. You’ll be asked to write two essays. The first one, 5 pages max, will be due in week 6. I’ll return it to you with comments in week 7. You’ll then have the opportunity to revise it and turn in the final version in week 9. You’ll get half credit for turning in a *complete* draft initially (points off for a partial draft), but the final grade will depend significantly on the quality of the rewrite. The second essay, 8 pages max., will be due (in final form) in week 15, a week before the end of the course. I’ll post the assignment for the first essay on Carmen, and soon thereafter a list of possible topics for the second.

The fourth kind of skill required for good seminar participation, perhaps the most important, is active engagement in our conversation in the meeting room. So you’ll also be graded on class participation, the quality and degree of your engagement, your questions and comments. I’ll keep track of attendance to help me track who’s participating.

There will also be three short homeworks in the first weeks, exercises designed to help you grasp particular linguistic phenomena more securely.

Kindly turn off cell phones during class, and use computers only for class materials.

As you can see from the course schedule, on most days you'll have reading to complete, and on each day you'll either submit reading questions, an exercise, a précis, or an essay. So I urge you to schedule carefully. Here is how these requirements will contribute to your grade:

<u>Requirement</u>	<u>Max. Points</u>	<u>% of final grade</u>
Reading questions: 15 x 5 points max	75	18.75
Exercises: 3 x 15 points max	45	11.25
Précis:	95	23.75
1 st précis: 15 points max		
2 nd , 3 rd : 20 points max each		
Essays:		
1 st : 5pp. max.	50	12.5
2 nd , 8pp. max.	85	21.25
Participation:	50	12.5

Reading questions, homework, précis and essays are all to be turned in electronically, on the Carmen site for the class (Discussion section for reading questions, Dropbox for the others); they must be turned in prior to class. **Reading questions must be submitted by 10am on the date given on the syllabus** (so that I have time to read them as I prepare for class). **Other assignments must be submitted by 2pm on the day they are due.** Late work will not be accepted for a grade, except in case of *verifiable* illness. Unless you have done the assigned work, you won't be prepared to participate in class.

All course readings (listed below) are mounted on Carmen, under the relevant course section. I've added a few that may also be useful for follow-up reading or research for papers, and may add more to Carmen as class moves along.

In addition to the assigned readings, a variety of auxiliary papers and legal reference works is listed on the course Carmen site, along with links to other on-line resources. Use those resources whenever you encounter a new legal concept or a legal term you don't understand. Relevant cases to read will be announced in class. Also, though Wikipedia is not a completely trustworthy resource from a scholarly point of view, because it lacks peer review, I have found the legal resources available on Wikipedia to be very well developed, often offering a useful start for understanding both terminology and basic concepts, and finding case summaries. You'll enjoy what you're reading a lot more, and get more out of it, and in the end your work will be more efficient, if whenever you encounter a term or concept you don't understand you take a minute to look it up, either on Wikipedia or an on-line dictionary like Merriam-Webster (my go-to online dictionary, easily accessed by Googling the term in question).

One can view a course syllabus as a sort of contract: Although I reserve the right to revise our schedule, and to change particular assignments and the grading scheme slightly in accordance, by offering this course as described (me) and by taking it (you), we all agree to abide by the terms described here insofar as possible. See disclaimers at the end.

Course Schedule:

The following schedule may be revised, as announced in class:

Week	Date	Topics	Readings	Other Work Due
Week 1	8/25 (T)	Introduction I	King v. Burwell (2015)	
	8/27 (R)	Introduction II	Solan (2012) (11pp.) Tiersma (2006) (23pp.)	Reading questions for Solan, Tiersma
Week 2	9/1 (T)	Language Basics	Language Files Chapter 1, Files 1.1-1.3; Chapter 6, Files 6.2-6.4	
	9/3 (R)	Linguistic Meaning I: Compositional meaning, truth conditions	Chierchia & McConnell-Ginet (2000) pp.1-24	Homework 1: CMcG Exercise.1, p.24 Questionnaire
Week 3	9/8 (T)	Linguistic Meaning II: Word meaning	Coleman & Kay (1981)	Reading questions for Coleman & Kay
	9/10 (R)	Linguistic Meaning III: Open texture, vagueness, and indeterminacy	Bix (2012) Brooks (2005)	Reading questions for Bix, Brooks
Week 4	9/15 (T)	Linguistic Meaning IV: Conversational implicature	Language Files, Chapter 7, Files 7.2-7.3 Chierchia & McConnell-Ginet (2000), pp.25-27	Homework 2: CMcG Exercise 2, p.27
	9/17 (R)	Linguistic Meaning V: presupposition and types of inference	Chierchia & McConnell-Ginet, pp.28-51	Homework 3: CMcG Exercise 3, pp.32-33
Week 5	9/22 (T)	Linguistic Meaning VI: Utterance meaning	Roberts (2004)	Reading questions for Roberts
	9/24 (R)	Linguistic Meaning VII: What is said and what is meant	Horn (to appear)	Précis of Horn: (maximum 1page)
Week 6	9/29 (T)	Linguistic Meaning VIII: Disambiguation		Essay I
	10/1 (R)	Linguistic Meaning IX: Opacity and ambiguity	Anderson (2014)	Reading questions for Anderson
Week 7	10/6 (T)	Principles of Judicial Interpretation I: Overview	Solan (1993), Chapter 1	Reading questions for Solan
	10/8 (R)	Principles II: Canons of Construction Discussion of essays	Solan (1993), Chapter 2 [essay 1 returned]	Reading questions for Solan
Week 8	10/13 (T)	Principles III: Canons of Construction, cont'd	Solan (1993), Chapter 3 Wikipedia: "Statutory interpretation"	Reading questions for Solan
	10/15 (R)	NO CLASS—AUTUMN BREAK		
Week 9	10/20 (T)	Principles IV: Plain Meaning	Fuller (1964) Solan (1993), Chapter 4 Sullivan (n.d.)	Revised Essay 1
	10/22 (R)	Principles V: Textualism and Originalism	Scalia (1997)	Précis of Scalia, (maximum 2 pages)

Week 10	10/27 (T)	Principles VI: Textualism and Originalism, cont'd	Solan (2004) [essay returned]	
	10/29 (R)	Principles VII: Linguistically reasonable textualism		Précis of Solan, (maximum 2 pages)
Week 11	11/3 (T)	Principles VIII: Jury instructions	Tiersma (1999), Chapter 14, (9pp.) Appendix D, (5pp.) Marder (2012) (9pp.)	Reading questions for Tiersma
	11/5 (R)	Principles IX: Jury instructions, cont'd	Solan (1999)	Reading questions for Solan
Week 12	11/10 (T)	Language Rights I: Silence	Ainsworth (2012) Davis & Leo (2012) Berguis v. Thompkins (Supreme Court 2010)	Reading questions for Ainsworth, Davis & Leo
	11/12 (R)	Language Rights II: Speech	Kontra (1996) Kunz (1995) European Charter for Regional or Minority Lgs	Reading questions for Kontra, Kunz
Week 13	11/17 (T)	Consent	Tiersma (2007)	Reading questions for Tiersma
	11/19 (R)	Sticks and Stones I: Threats	Solan & Tiersma (2005) Elonois v. United States (US Supreme Court 2015)	Reading questions for Solan & Tiersma
Week 14	11/24 (T)	Sticks and Stones II: Slurs	Camp (2014)	
	11/26 (R)	NO CLASS—THANKSGIVING		
Week 15	12/1 (T)	Owning Language: Trademark	Shuy (2012) US v. Van Wyk	Essay 2
	12/3 (R)	Owning Language: Copyright	Butters (2012)	Reading questions for Butters
Week 16	12/8 (T)	Owning Language: Trademark, cont'd	[essays returned]	
FINALS (Fri. 12/11 – Thurs. 12/17)				

Readings:

- Adler, Mark (2012) The plain language movement. In Solan & Tiersma (eds.) (2012), Chapter 5.
- Ainsworth, Janet (2012) The meaning of silence in the right to remain silent. In Solan & Tiersma (2012), Chapter 20.
- Anderson, Jill C. (2014) Misreading like a lawyer: Cognitive bias in statutory interpretation. *Harvard Law Review* 127:1521.

- Bix, Brian H. (2012) Legal interpretation and the philosophy of language. In Solan & Tiersma (2012), Chapter 10.
- Brooks, Peter (2005) The plain meaning of torture? Literary deconstruction and the Bush administratin's legal reasoning. *Slate Magazine* February 9, 2005:
http://www.slate.com/articles/news_and_politics/jurisprudence/2005/02/the_plain_meaning_of_torture.html
- Butters, Ronald R. (2012) Language and copyright. In Solan & Tiersma (2012), Chapter 33.
- Camp, Elisabeth (2014) The semantics of slurs: A dual speech-act analysis. Ms., Rutgers University.
- Chierchia, Gennaro & Sally McConnell-Ginet (2000) *In Introduction to Semantics*. Chapter One: Implication Relations. MIT Press.
- Coleman, Linda & Paul Kay (1981) Prototype semantics: The English word *lie*. *Language* 57.1:26-44.
- Craig, Robin Kundis (2005) The Stevens/Scalia Principle and why it matters: Statutory conversations and a cultural critical critique of the strict plain meaning approach. *Tulane Law Review* 79:955.
- Crowe, Michael: 3-part YouTube video "Miscarriages/Travesty of justice. First tape:
<https://www.youtube.com/watch?v=HGp1LVciP2c>
- Davis, Deborah & Richard A. Leo (2012) Interrogation through pragmatic implication: Sticking to the letter of the law while violating its intent. In Solan & Tiersma (2012), Chapter 25.
- Farnsworth, Ward, Dustin F. Guzior & Anup Malani (2009) Ambiguity about ambiguity: An empirical inquiry into legal interpretation. Available at:
<file:///C:/Users/Craige%20Roberts/Downloads/SSRN-id1492907.pdf>
- Fuller, Lon (1964) Eight ways to fail to make a law. *The Morality of Law*. Yale University Press, New Haven. Reprinted in J. Feinberg & H. Gross (eds.) *Philosophy of Law*. Wadsworth Publishing, Belmont, CA.
- Hertko, Matthew J. (2005) Abandoning the plain meaning rule for an extratextual approach. *University of Illinois Law Review* 2005:377.
- Horn, Laurence R. (to appear) Telling it Slant: Toward a Taxonomy of Deception. To appear in Dieter Stein & Janet Giltrow (eds.) *The Pragmatic Turn in Law: Interpretation and inference*. Berlin: de Gruyter.
- Kahan, Dan M. (2009) Culture, cognition, and content: Who perceives what, and why, in "acquaintance rape" cases. Available at:
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1437742
- Kontra, Miklos (1996) Language Rights arguments in Central Europe and the USA: How similar are they? In Douglas A. Kibbee (ed.) *Language Legislation and Linguistic Rights: Selected Proceedings of the Language Legislation and Linguistic Rights Conference*. IMPACT: Studies in Language and Society, Volume 2.
- Kunz, Keneva (1995) Where the Devil Meets his Grandmother: Iceland and European Community Legislation. In Morris (1995).
- Levi, Edward (1949) *An Introduction to Legal Reasoning*. University of Chicago Press, Chicago. Chapter 2.
- Marder, Nancy S. (2012) Instructing the jury. In Solan & Tiersma (2012), Chapter 31.

- Nadler, Janice & J.D. Trout (2012) The language of consent in police encounters. In Solan & Tiersma (eds.), Chapter 23.
- OSU Linguistics Department, The (2011) *The Language Files*, 11th edition. OSU Press.
- Parmet, Wendy E. (2000) Plain meaning and mitigating measures: Judicial interpretations of the meaning of disability. *Berkeley Journal of Employment and Labor Law* 21:53.
- Roberts, Craige (2004) Context in dynamic interpretation. In Laurence Horn & Gregory Ward (eds.) *Handbook of Pragmatics*. Blackwell, NY.
- Scalia, Antonin (1997) Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws. In Scalia, A *Matter of Interpretation: Federal Courts and the Law*, Princeton University Press, Princeton, NJ.
- Shuy, Roger W. (2012) Using linguistics in trademark cases. In Solan & Tiersma (2012), Chapter 32.
- Smith, Tara (2007) Why originalism won't die—Common mistakes in competing theories of judicial interpretation. *Duke Journal of Constitutional Law and Public Policy* 159.
- Solan, Lawrence M. (1993) *The Language of Judges*. Chicago University Press. Chapters 2 & 3.
- Solan, Lawrence M. (1999) Refocusing the burden of proof in criminal cases: some doubt about reasonable doubt. *Texas Law Review*.
- Solan, Lawrence M. (2004) Private Language, Public Laws: The central role of legislative intent in statutory interpretation. *Georgetown Law Journal* 93:427-486.
- Solan, Lawrence M. (2012) Linguistic issues in statutory interpretation. In Solan & Tiersma (2012) Chapter 6.
- Solan, Lawrence M., Terri Rosenblatt & Daniel Osherson (2008) False consensus bias in contract interpretation. *Columbia Law Review* 108:1268.
- Solan, Lawrence M. & Peter Tiersma (2005) Threats. In Solan & Tiersma (2005), Chapter 10.
- Solan, Lawrence M. & Peter Tiersma (eds.) (2012) *The Oxford Handbook of Language and the Law*. Oxford University Press. See the file with their references. Available on-line through OSU library, call number [K213 .O94 2012](#).
- Sullivan, Ruth (n.d.) The plain meaning rule and other ways to cheat at statutory interpretation. <http://aix1.uottawa.ca/~resulliv/legdr/pmr.html>.
- Tiersma, Peter (1999) *Legal Language*. University of Chicago Press, Chapters 4-6 and Chapter 14 and Appendix D.
- Tiersma, Peter (2007) The language of consent in rape law. In Janet Cotterill (ed.) *The Language of Sexual Crime*, London: Palgrave-Macmillan, Chapter 5.
- Tiersma, Peter (2006) Some myths about legal language. *Law, Culture and the Humanities* 2:29. doi: 10.1191/1743872106Iw035oa. On-line at: <http://lch.sagepub.com/content/2/1/29>
- Woolis, David (2012) Detecting plagiarism. In Solan & Tiersma (2012), Chapter 37.

Students with Disabilities: Students who need some accommodation because of a disability must contact the instructor as soon as possible to discuss the course format, to anticipate needs, and to explore potential accommodations. The instructor relies on the Office of Disability Services for assistance in verifying the need for accommodations and developing accommodation strategies. Students who have not previously contacted the Office for Disability Services are strongly encouraged to do so (614-292-3307; www.ods.ohio-state.edu).

Academic Misconduct: Academic dishonesty will not be allowed under any circumstances. Cheating on tests or on other assignments will be reported to the University Committee on Academic Misconduct. The most common form of misconduct is plagiarism. Remember that any time you use the ideas or the materials of another person or persons, you must acknowledge that you have done so in a citation. This includes material that you have found on the Web. OSU provides guidelines for such matters; this will be the subject of your first paper.

Notice is hereby given that the aforementioned course shall henceforth be conducted in compliance with the provisions of Ohio Revised Code sections 4705.01 and 4705.07, and that said instructors to wit those who are engaging in the instruction of the said course renounce any and all implications as to any statutory entitlement under the aforementioned Ohio Revised Code to act, conduct business as, or practice those activities so stated under ORC 4705.01 to be restricted to those parties who have been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, to wit, those actions referred to and commonly known as but not limited to being a “lawyer,” “attorney at law,” “counselor at law,” or other equivalent words, by the act of conducting the act defined as “instruction” with respect to said course. The aforementioned instructors do hereby testify, swear and give oath that except as provided by ORC 4705.07 (A)(3), those educational activities pursued in the said aforementioned course are in compliance with all applicable statutes and regulations to the best of the knowledge of the parties of the first part, and should in no way be construed as constituting the act of “practicing law” or “giving legal advice” as hitherto proscribed, regulated and prohibited in accordance with Ohio statutes. Compliance with ORC 4705.07 (A)(3) is to be determined in accordance with the provisions, conditions, stipulations and procedures established and set forth under and wholly contained in ORC 4705.07 (B)(2): no representation, material, factual, substantive or otherwise, is made as to the said statutory conditions, in compliance with the conditions of ORC 4705.07. The conditions of this disclaimer are subject to all applicable state, local and federal laws, rules, regulations and administrative or judicial decisions rendered by duly authorized regulatory, legislative and judicial bodies, and do not in and of themselves disparage any further rights which may or may not be guaranteed statutorily by any parties so affected, or otherwise.²

² Disclaimer due to my colleague Dave Odden, who worked with me on the original proposal for this course.